IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

RP.No. 901 of 2007

AGAINST THE JUDGEMENT IN WA.374/2007
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REVIEW PETITIONERS/APPELLANTS
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1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, HOME DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. NOBKL MATHEW

RESPONDENTS: RESPONDENTS
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1. N.GOPALAKRISHNA KARNAVAR, MELETHUTHEKKETHIL, P.C.NO.A-103(RTD), VAZHUVADY, THAZHAKKARA VENMONY PS, MAVELIKKARA, ALAPPUZHA.

2. K.P.MATHAI, KINATTUKARAYIL, P.C.NO.A-1802(RTD), PUTHENVEEDU, VENMONY PS, KOLLAKKADAYIL, ALAPPUZHA.

3. M.DIVAKARAN, MEENATHETHIL HOUSE, PC NO.A02151 (RTD) PERINGILPURAM P.O., MAVELIKKARA PS, ALAPPUZHA.

4. K.P.THOMAS, BIJU BHAVAN, MANGALAM, PC NO.N-287 (RTD), VAZHARMANGALAM P.O., KOIPURAM PS, CHENGANNUR, ALAPPUZHA.

5. P.SADHASIVAN PILLAI, PUTHENPURAKKAL HOUSE, ASI,(RTD) PC NO.300, MAMPRA P.O., CHITTAR PS, CHENGANNUR, ALAPPUZHA.

6. G.G.MAHESWARA KURUP,
ERAMATHU PUTHENVEEDU, SI, (RTD) PC NO.303,
BUDHANOOR P.O., CHENGANNUR PS, CHENGANNUR,
ALAPPUZHA.

7. P.K.SADANANDAN, PATHAYAPURAYIL HOUSE,
HC (RTD) PC NO.584, VALIYAKULAM, VECHUCHIRA PS,
CHERKULANJI P.O., PATHANAMTHITTA.

8. P.N.PURUSHOTHAMAN, AMBADY HOUSE
HC (RTD), PC NO.N-586) ARANMULA PS,
CHENGANNOOR, ALAPPUZHA.

9. V.J.JOHN, VAZHAYIL BIBI VILLA,
PC(RTD) PC NO.N-594, PUTHENCAVU P.O.
KOYIPURAM PS, CHENGANOOR, ALAPPUZHA.

10. C.VARGHESE, PARUTHUPARAPUTHEN VEEDU,
PC (RTD) PC NO.N-595) ERUMAKKADU P.O.,
EDAYARANMULA, PATHANAMTHITTA.

11. R.PADMANABHA PANICKER, THARAYIL
PUTHENVEEDU, HC (RTD) PC NO.N-792
ARANMULA PS, CHENGANNOOR, PATHANAMTHITTA,
ALAPPUZHA.

12. K.M.PURUSHOTHAMAN, KARALIL HOUSE,
HC (RTD) PC NO.N-811, KURUCHIMUTTOM P.O.
THIRUVALLA PS, EDAUARANMULA, PATHANAMTHITTA.

13. V.G.PRABHAKARAN NAIR, KANNAN VEETTIL
HOUSE, HC (RTD) PC NO.N-843, SBCID,
KOTTA P.O., KIDANGANOOR, PATHANAMTHITTA.

BY ADV. SRI.C.RASHEED

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 05/10/2007 ALONG WITH R.P NO. 904/2007 AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

R.P.No.901/2007 in W.A.No.374/2007,
R.P.No.904/2007 in W.A.No.387/2007,
R.P.No.905/2007 in W.A.No.383/2007,
R.P.No.910/2007 in W.A.No.373/2007,
R.P.No.911/2007 in W.A.No.386/2007,
R.P.No.918/2007 in W.A.No.391/2007,
R.P.No.926/2007 in W.A.No.372/2007,
R.P.No.928/2007 in W.A.No.370/2007,
R.P.No.935/2007 in W.A.No.345/2007,
R.P.No.938/2007 in W.A.No.343/2007,
R.P.No.942/2007 in W.A.No.369/2007,
R.P.No.945/2007 in W.A.No.371/2007,
R.P.No.948/2007 in W.A.No.363/2007,
R.P.No.950/2007 in W.A.No.381/2007,
R.P.No.953/2007 in W.A.No.348/2007,
and
R.P.No.965/2007 in W.A.No.347/2007

Dated this the 5th day of October, 2007

O R D E R

Koshy,J.

In the judgments under review, we noticed that the writ appeals were filed with a delay of more than 400 days. We found that no valid grounds were urged for condonation of delay and no satisfactory reasons were stated to condone the long delay of more than one year. Incidentally, we noted that some of the identical writ petitions were dismissed by the court and as far as the

question of law is concerned, the matter was already decided by the Division Bench and appeals filed in the Supreme Court were dismissed. One of the appeals is Civil Appeal No.2018 of 2000. The order is quoted below:

> "The High Court has consistently taken the view that the period of training undergone by the respondent should be treated as period spent on duty for the purpose of scale of pay, increments and other consequential benefits. This view was expressed by the High Court in the case of Lakshmanan v. State of Kerala - 1995 (1) KLT 115 and that decision in turn follows other decisions in Louis v. Kerala Public Service Commission - 1965 KLT 1282 and Haridasan v. State of Kerala - 1987 (2) KLT 486. As this has been the consistent view and the orders in those cases not having been challenged before this court, we do not think that it is a fit case for our interference under article 136 of the Constitution. The appeal is, therefore, dismissed."

Therefore, civil appeals filed from the earlier decisions were upheld. We also noticed that the amounts due to those petitioners were already paid. Even though the legal issue involved is already settled, we have dismissed the writ appeal only because of the long delay in filing the same. There is no apparent error in the judgment. There are no generally accepted grounds for filing the review petition in the matter. It is admitted that delay of more than 400 days occurred in filing the

writ appeals and we have considered the delay condonation petitions and no valid satisfactory reasons are given for condoning the delay of more than 400 days. The judgment was pronounced in open court. Only one question of law was involved which was decided against the Government by the earlier decisions which were upheld by the Hon'ble Apex Court. In any event, preparation of appeals is of no difficult task and, therefore, delay of over 400 days in preparing the appeal is not justifiable.

2. The only reason argued before us was that W.A.No.1132 of 2007 and connected cases were allowed on 18.6.2007 by another Division Bench and the judgment of the above Division Bench was shown to us. It is seen that the above writ appeals were allowed setting aside the judgment of the learned single Judge only because petitioners in those cases approached the Government very late claiming the relief and not on the legal point argued by the Government.

3. Counsel for the respondent submitted that once the writ petitions are admitted and kept pending for long time and finally decided on merits exercising discretionary jurisdiction under Article 226 of the Constitution, the above discretionary relief granted

cannot be taken away in appeal especially when the legal position is settled in favour of the petitioners. Scope of interconnected writ appeals is also very limited as held by the Apex Court in Smt.Asha Devi v. Dukhi Sao and another ((1974) 2 SCC 492); Manjunath Anandappa Url. Shivappa Hansi v. Tammanasa and others (2003 AIR SCW 1830 at para 36) = ((2003) 10 SCC 390) and Uttar Pradesh Co-operative Federation Limited v. Sunder Brothers, Delhi (AIR 1967 SC 249). It is also submitted that a reading of the above judgment would show that in the above writ appeals court was more concerned with the amount involved in the case as mentioned by the Government Pleader which is also not correct as large number of similarly placed persons were already paid the benefits on the basis of the earlier orders of the court. It was also contended that when the law was fairly declared by the court even without acting as a model employer, Government ought to have paid the amount legally due to the employees. We are not sitting in appeal over the judgment in W.A.No.1132 of 2007. It is for the aggrieved party to approach the High Court. We are only concerned with the review petitions in these cases. Judgment in W.A.No.1132 of 2007 which refused the relief prayed for by the

petitioners due to delay was delivered only on 18.6.2007. Even if the judgments ought to be reviewed is overruled subsequently, it is not a ground for reviewing the decision as held by the Supreme Court in Shanti Devi v. State of Haryana (2000 (1) KLT 697). For reviewing the judgment there should be discovery of some mistake or error apparent on the face of the record or there should be some document which in the exercise of diligence appellants were not able to produce. Here, there is no apparent error on the face of the record. Admittedly, writ appeals were filed with more than 400 days delay. Therefore, though writ appeals were dismissed, the remedy of the appellant is to file appeal if the judgment under review is erroneous in law. A review is no means an appeal in disguise as held by the Supreme Court in M/s. Thungabhadra Indsustries Ltd. v. Government of AP (AIR 1964 SC 1372). The above view was again reiterated by the Supreme Court in Meera Bhanja v. Nirmala Kumari Choudhury ((1995) 1 SCC 170) holding that review proceedings are not by way of appeal proceedings or re-hearing of the matter or it is to be strictly on finding the settled ground of review. The Supreme Court in Promoters and Builders Association of Pune v. Pune Municipal

Corporation and others (2007 AIR SCW 3540) held as follows:

> "11. As was observed by this Court in Col.Avtar Singh Sekhon v. Union of India ((1980) Supp. SCC 562) review is not a routine procedure. A review of an earlier order is not permissible unless the Court is satisfied that material error, manifest on the face of the order undermines its soundness or results in miscarriage of justice. A review of judgment in a case is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility."

The same view was expressed by the Apex Court in Devender Pal Singh v. State, N.C.T. of Delhi and another ((2003) 2 SCC 501) in paragraph 16. Since there is no apparent error on the face of the record and no grounds are made out to condone the delay, the delay condonation petitions were already dismissed. Hence, the review petitions are dismissed.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

prp

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A.NO. OF 2002

Judgment

Dated:13th September, 2007